IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Tr.P(C).No. 54 of 2007

OP.1681/2006 OF FAMILY COURT,ERNAKULAM.
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PETITIONER:

RAJA NARAYANAN, AGED 39 YEARS,
S/O.LATE K.KESAVAKURUP, RESIDING AT
VEMPUMTHANAM BUNGLOW, KARUKACHAL,
CHANGANACHERRY, KOTTAYAM DISTRICT.

BY ADV. SRI.MOHAN JACOB GEORGE,
SMT.P.V.PARVATHI,
SMT.REENA THOMAS,
SRI.TITUS THOMAS,
SRI.L.RAM MOHAN.

RESPONDENT:

PRIYA GOPINATHAN, AGED 33 YEARS,
D/O.LATE GOPINATHAN NAIR, ARAPURACKAL HOUSE,
CHOORAKKODU P.O., ADOOR, PATHANAMTHITTA DISTRICT,
NOW RESIDING AT C/O.SARASWATHY GOPINATHAN, NO.10,
"SAKTHI",BEHIND RAJESWARY THEATRE, NR LAYOUT,
AIRPORT ROAD, BANGALORE-17.

BY ADV. SRI.PHILIP T.VARGHESE,
SRI.THOMAS T.VARGHESE.

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, ALONG WITH TRP (C) NO. 89/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

Tr.P.C.Nos. 54 & 89 OF 2007

Dated this the 6th August, 2007.

JUDGMENT

Tr.P.C.89/07 is filed by the wife for transfer of O.P (HMA) 810/06 filed by the husband for divorce before the Family Court, Kottayam at Ettumanoor. The other petition 54/07 is filed by the husband to transfer O.P.1681/06 pending before the Family Court at Ernakulam to the Family Court, Kottayam at Ettumanoor. This is a case where both the husband and wife have filed two applications for divorce in two different courts. According to the wife she is employed in Bangalore and it will be inconvenient for her to attend the Family Court, Kottayam and therefore, it must be transferred to Family Court at Ernakulam. The husband would contend that the very filing of the second divorce petition itself is mischievous and it is only to harass him and as per Section 21A of the Hindu Marriage Act, 1955 when petitions are filed for the same relief in two different courts the procedure to be followed is to transfer the case filed later to the other court where the earlier case is pending and, therefore, it is submitted that the case at Ernakulam be transferred to Kottayam. At the outset I may like to state that Ernakulam is not the permanent residence of the wife. It is submitted that she

belongs to Pathanamthitta district and she is living at Bangalore. Now the contention is if she wants to come by train it will take her more time to travel to the Family Court, Kottayam at Ettumanoor and, therefore, considering her convenience the transfer should be effected. Learned counsel for the husband would contend that Section 21A will be clearly a bar for such prayer. The husband and wife both have approached the courts for the same relief of divorce. The husband had approached the court at the earliest instance and Section 21A prescribes the procedure how a later case filed for the same relief should be dealt with. So, one has to respect the statutory obligation unless there are such convincing inconvenience for the other side. When a client comes for a case her or his real presence is necessary only at times when conciliation talk is going on and in case of its failure at the stage of trial where parties have to be examined. It is the list system that is followed in this state. When the matter is listed the case will go on, on the basis of a day to day trial system. So when the trial commences neither the husband nor the wife can afford to leave the place on the very same day. Similarly for preparation of the case also it may not be possible for a party to arrive exactly in time to instruct the lawyer. The running time between Ernakulam and Kottayam by train at the most is 60 to 90

mts. The grounds suggested are not so serious which requires a consideration beyond the statutory obligation cast upon the court under Section 21A of the Hindu Marriage Act. Therefore, I find as contended by the counsel for the husband that the way out in this case is to transfer O.P.1681/06 pending before the Family Court at Ernakulam to the Family Court, Kottayam at Ettumanoor for joint trial and disposal. But at the same time I direct the Family Court, Kottayam at Etttumanoor not to insist for the presence of the wife unless it is so required because the parties arrival from Bangalore to Kottayam at Ettumanoor on formal posting days will be very difficult and almost an impossible task. So this aspect be borne in mind when an application is filed for exempting her from personal appearance before the court. With these observations O.P.1681/06 pending before the Family Court, Ernakulam is transferred to the Family Court,Kottayam at Ettumanoor to be tried along with O.P.810/06 pending before the said court. Both the transfer petitions are disposed of accordingly.

M.N.KRISHNAN
Judge

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